

COUNCIL OF THE DISTRICT OF COLUMBIA

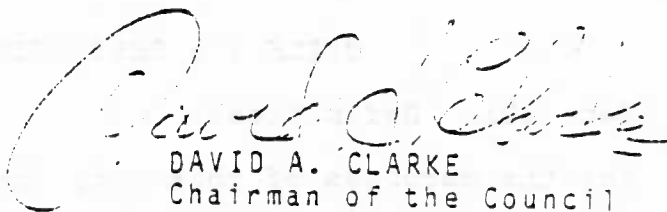
NOTICE

D.C. LAW 6-108

"Nursing Home and Community Residence Facility Residents' Protections Act of 1985".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 6-256 on first and second readings, January 28, 1986, and February 11, 1986, respectively. Following the signature of the Mayor on February 24, 1986, this legislation was assigned Act No. 6-138, published in the March 14, 1986, edition of the D.C. Register, (Vol. 33 page 1510) and transmitted to Congress on February 26, 1986 for a 30-day review, in accordance with Section 602 (c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 6-108, effective April 18, 1986.

  
DAVID A. CLARKE  
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

February 26,27,28  
March 3,4,5,6,7,10,11,12,13,14,17,18,19,20,21,24,25,26,27  
April 8,9,10,11,14,15,16,17

EFFECTIVE DATE APR 18 1986

AN ACT

D.C. ACT 6 - 138

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEB 24 1986

To establish receivership and monitor procedures, procedures for the safe discharge, transfer, and relocation of residents, private rights of action, and special rules for civil fines and penalties with respect to nursing homes and community residence facilities; to amend the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983 to provide a penalty for unauthorized advance disclosure of an unannounced inspection and to authorize the imposition of civil fines and penalties against facilities and agencies licensed under that law.

CODIFICATION  
new chapter  
of title 32

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,  
That this act may be cited as the "Nursing Home and  
Community Residence Facility Residents' Protections Act of  
1985".

TITLE I - DEFINITIONS

Sec. 101. Definitions.

For the purposes of this act, the term:

New,  
D.C. Code, s  
32-1401  
(1987 supp.)

(1) "Administrator" means the person who is responsible for the day-to-day operation and management of a facility, including, in the case of a community residence facility, the Residence Director of the facility.

(2) "Affiliate" means:

(A) With respect to a partnership, each partner;

(B) With respect to a corporation, each officer and director and each stockholder who directly or indirectly owns or controls 10% or more of any class of securities issued by the corporation; and

(C) With respect to an individual:

(i) Each parent, child, grandchild, spouse, sibling, first cousin, aunt, and uncle of the individual, whether the relationship arises by blood, marriage, or adoption;

(ii) Each partnership in which the individual or an affiliate of the individual is a partner, and each other partner in that partnership; and

(iii) Each corporation in which the individual or an affiliate of the individual is an officer, director, or stockholder who directly or indirectly owns or controls 10% or more of any class of securities issued by the corporation.

(3) "Community residence facility" means that term as it is defined in section 2(a)(4) of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Code, sec. 32-1301(a)(4)).

(4) "Court" means the Superior Court of the

District of Columbia.

(5) "District" means the District of Columbia.

(6) "Facility" means a nursing home or community residence facility operating in the District.

(7) "Long-Term Care Ombudsman" means the person designated under section 307(a)(12) of the Older Americans Act of 1965, approved October 18, 1978 (92 Stat. 1525; 42 U.S.C. 3027(a)(12)), to perform the mandated functions of the Long-Term Care Ombudsman program in the District.

(8) "Nursing home" means that term as it is defined in section 2(a)(3) of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Code, sec. 32-1301(a)(3)).

(9) "Person" means an individual or individuals, an agency, a corporation, a partnership, the District government, or any other organizational entity.

(10) "Resident" means a resident of a facility.

(11) "Resident's representative" means:

(A) Any person who is knowledgeable about a resident's circumstances and has been designated by that resident to represent him or her;

(B) Any person who has been appointed by a court or government agency either to administer a resident's financial or personal affairs or to protect and advocate for

a resident's rights; or

(C) The Long-Term Care Ombudsman or his or her designee, if no person has been designated or appointed in accordance with subparagraphs (A)-(B) of this paragraph.

## TITLE II - RECEIVERSHIPS

### Sec. 201. Purpose of receivership.

The purpose of a receivership authorized under this title shall be to safeguard the health, safety, and welfare of a facility's residents when seriously endangered, to ensure their continuity of care, to safeguard their rights as recognized by District and federal law, and to protect them from the increased stress and risk of trauma often associated with abrupt or unplanned transfer and discharge. A receiver appointed under this title shall not take any actions or assume any responsibilities inconsistent with this purpose. Nothing in this title shall be construed to limit or abrogate any other common law or statutory right to petition for receivership.

New,  
D.C. Code,  
32-1411  
(1987 supp.)

### Sec. 202. Grounds for receivership.

A receiver may be appointed under this title on 1 or more of the following grounds:

New,  
D.C. Code,  
32-1412  
(1987 supp.)

(1) The facility is unlawfully operating without a current District license;

(2) The licensee has abandoned the facility;

(3) The facility is closing within 30 calendar days and cannot offer verifiable evidence that adequate arrangements, designed to minimize transfer trauma, have been made to relocate its residents;

(4) A condition or practice in the facility poses a serious, widespread danger, either immediate or recurring, to the health, safety, or welfare of the residents;

(5) Violations of residents' rights, established pursuant to section 5(a)(4) of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Code, sec. 32-1304(a)(4)), are chronic, substantial, and widespread; or

(6) Insolvency of an owner or the licensee has placed the continued operation of the facility in serious jeopardy.

Sec. 203. Petitions for receivership.

(a) Notwithstanding the availability of any other remedy, the Corporation Counsel may, in the name of the District and based on 1 or more of the grounds listed in section 202, petition the court to appoint a receiver for any facility.

(b) Notwithstanding the availability of any other remedy, a resident, a resident's representative, the Long-Term Care Ombudsman, or any other advocate representing

New,  
D.C. Code  
32-1413  
(1987 sup)

the interests of a facility's residents may, based on 1 or more of the grounds listed in section 202(2)-(6), submit a written request asking the Corporation Counsel to petition the court to appoint a receiver for any facility. If the Corporation Counsel denies the request or does not file a petition within 5 days (excluding Saturdays, Sundays, and legal holidays) after receiving a request, the requestor may file with the court a petition for the appointment of a receiver.

(c) The licensee of any facility may, based on 1 or more of the grounds listed in section 202, petition the court to appoint a voluntary receiver for that facility.

Sec. 204. Notice and hearing requirements; ex parte appointment.

New,  
D.C. Code  
32-1414  
(1987 sup)

(a)(1) The court shall hold a hearing on a petition filed under section 203 within 10 days (excluding Saturdays, Sundays, and legal holidays) after it is filed.

(2) The petitioner (if he or she is not the licensee) shall ensure that the licensee or administrator of the facility is served with notice of the hearing date and a copy of the petition:

(A) In accordance with court rules at least 5 days (excluding Saturdays, Sundays, and legal holidays) before the hearing; or

(B) By a notice conspicuously posted inside

or on the front door of the facility at least 3 days (excluding Saturdays, Sundays, and legal holidays) before the hearing, if the petitioner files with the court a sworn statement setting forth in detail his or her diligent but unsuccessful efforts to find the licensee or administrator and serve process.

(3) Upon filing a petition with the court, a petitioner other than the District shall serve notice of the hearing date and a copy of the petition on the Corporation Counsel. No later than 5 days (excluding Saturdays, Sundays, and legal holidays) after receiving a copy of the petition, the Corporation Counsel shall, to the extent allowable under federal law, make available to the petitioner for his or her use in the proceedings certified copies of all licensure and Medicare/Medicaid certification reports within the custody of the District government that document conditions in the facility within the previous 2 years.

(b)(1) The court may appoint a receiver immediately upon the filing of a petition under section 203 if it finds probable cause to believe a condition or practice in a facility poses an immediate danger of death or life-threatening injury to the residents.

(2) In the event of an ex parte appointment under paragraph (1) of this subsection, the petitioner (if he or



she is not the licensee) shall ensure that the licensee or administrator of the facility is served with notice of the hearing date and copies of the petition, any supporting affidavit(s), and the order of appointment:

(A) By personal service within 24 hours after the appointment; or

(B) By a notice conspicuously posted inside or on the front door of the facility within 48 hours after the appointment, if the petitioner files with the court a sworn statement setting forth in detail his or her diligent but unsuccessful efforts to find the licensee or administrator and serve process.

Sec. 205. Appointment of receiver; continuation of ex parte appointment.

New,  
D.C. Code,  
32-1415  
(1987 supp

(a) After a hearing the court may appoint a receiver for the facility or continue the appointment of a receiver made ex parte if it finds that the petitioner has proven, by clear and convincing evidence, the existence of 1 or more of the grounds for receivership listed in section 202.

(b)(1) The Mayor shall, after consulting with appropriate District government agencies, the Long-Term Care Ombudsman, and representatives from nursing home and community residence facility providers, establish a list of potential receivers with experience in the delivery of health-care services, preferably in the operation of a

nursing home or community residence facility.

(2) Except as provided in paragraph (3) of this subsection, the court may appoint as a receiver any qualified person with experience in the delivery of health-care services, preferably in the operation of a nursing home or community residence facility. In deciding whom to appoint, the court shall give strong consideration to the list of mayoral nominees established pursuant to paragraph (1) of this subsection.

(3) The court shall not appoint as a receiver:

(A) An employee of a District government agency that licenses, operates, or provides a financial payment to, the type of facility being placed in receivership;

(B) The owner, licensee, or administrator of the facility, or an affiliate of the owner, licensee, or administrator; or

(C) A parent, child, grandchild, spouse, sibling, first cousin, aunt, or uncle of 1 of the facility's residents, whether the relationship arises by blood, marriage, or adoption.

(c)(1) Before a receiver takes charge of a facility, he or she shall file a bond with the court that:

(A) Does not exceed the value of the facility and its assets; and